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CONTRACTS — ASSIGNMENTS — SUFFICIENCY OF NOTICE TO A BANK OF THE ASSIGNMENT OF AN ACCOUNT — On March 25, 1933 an account in *D* Bank was assigned to *P*. A week later the bank received from *P* a formal statement of the assignment, which the bank totally ignored for nine months.[1] In the meantime the bank debited the account for the price of thirty shares of its stock which the depositor-assignor bought in October. On January 2, 1934, *D* Bank acknowledged receipt of the letter of notice, but denied any liability to *P* thereunder. In a suit brought by *P* for the account, the only question was the right of *D* Bank to take the price of the stock from the account after notice of the assignment. *Held*, with three judges dissenting, that the bank was under no obligation to recognize any interest of *P* in the account until the original of the assignment was voluntarily presented as notice of the claim thereunder. *Gibraltar Realty Corp. v. Mount Vernon Trust Co.*, 276 N. Y. 353, 12 N. E. (2d) 438 (1938).

It is universally held that proper notice of the assignment of a debt must be given the debtor before the rights of the assignee become fixed as against him.[2] From the standpoint of the debtor this notice imposes upon him the responsibilities of a stakeholder:[3] thereafter he pays the debt at his peril.[4] The situation forces the debtor to protect himself by retaining the fund until proofs of claim are made to him.[5] The notice sufficient to place the debtor in this position is tested by a rule of reasonableness,[6] adapted to the circumstances.

[1] Following the "bank holiday," funds were not available to check against until June, 1933. During this period, an assignment was the only satisfactory method of promptly obtaining present rights in the account. By sec. 189 of the Negotiable Instruments Law a check does not operate as an assignment and would have been unsatisfactory in this period.

[2] 2 WILLISTON, CONTRACTS, rev. ed., § 433 (1936); 4 AM. JUR. 301 (1936); Phelps v. Holden, 107 Vt. 1, 175 A. 250 (1934); Goodman v. Zitserman, 47 R. I. 466, 134 A. 4 (1926); Laclede Bank v. Schuler, 120 U. S. 511, 7 S. Ct. 644 (1886). Till he receives notice, the debtor may obtain a discharge from the assignor good against the assignee. Boyd v. Sloan, 335 Mo. 163, 71 S. W. (2d) 1065 (1934).

[3] Palmer v. Palmer, 112 Me. 149, 91 A. 281 (1914). A bailee who has notice of a claim adverse to his bailor is in the same position. See Hattiesburg Auto Sales Co. v. Morrison, 136 Miss. 632, 101 So. 690 (1924); BROWN, PERSONAL PROPERTY, 319 (1936). Similarly a garnishee. North Penn Iron Co. v. International Lithoid Co., 217 Pa. 538, 66 A. 860 (1907).

[4] The assignee takes all the rights but only the rights of the assignor. Fox v. Vim Electric Co., 156 Misc. 621, 281 N. Y. S. 459 (1935). But the assignee has these rights if the assignment was valid, whether the debtor pays to another or not. State Street Furniture Co. v. Armour & Co., 345 Ill. 160, 177 N. E. 702 (1931). Technically this does not increase the burden of the debtor, but actually it not only demands vigilance and inquiry of the debtor but, as in the case of wage assignments, may impose a considerable burden. See Fortas, "Wage Assignments in Chicago," 42 YALE L. J. 526 (1933).

[5] In appropriate cases, the debtor might be forced to resort to interpleader. 91 Am. St. Rep. 593 at 605 (1903). Compare the case of the bailee who may demand a reasonable time before delivery to determine claimants' rights. Fletcher v. Fletcher, 7 N. H. 452 (1835).

[6] Merrill, "Unforgettable Knowledge," 34 MICH. L. REV. 474 at 486 (1936).

It need not be formal; [7] it need not come from the assignee directly; [8] neither need it include proofs.[9] But it must give the debtor knowledge that a bona fide claim is asserted;[10] it must name the assignee,[11] and it must be such that a reasonable man would give heed to it.[12] When such notice, and no more, is given a bank that an account has been assigned, there is some embarrassment in holding that the rights of the assignee against the bank are fixed as though the account were an ordinary debt.[13] The difficulty is that the bank would be liable to the assignee if the assignment were good, and liable to the assignor-depositor for slander of credit [14] if a check were dishonored when in fact the

The reasonably prudent man must have an ordinarily decent regard for the asserted claims of others. Compare the language of the court in Whitecotton v. Wilson, (Mo. App. 1917) 197 S. W. 168 at 170.

[7] Continental Purchasing Co., Inc. v. Van Raalte Co., Inc., 251 App. Div. 151, 295 N. Y. S. 867 (1937).

[8] Cochrane v. Hyre, 49 W. Va. 315, 38 S. E. 554 (1901); Dale v. Kimpton, 46 Vt. 76 (1873).

[9] Continental Purchasing Co., Inc. v. Van Raalte Co., Inc., 251 App. Div. 151, 295 N. Y. S. 867 (1937), citing Bean v. Simpson, 16 Me. 49 (1839).

[10] Phelps v. Holden, 107 Vt. 1 at 6, 175 A. 250 (1934): "He [the debtor] must be given fully to understand what the interest is asserted to be." Similarly Ellis v. Amason, 17 N. C. 273 (1832); Skobis v. Ferge, 102 Wis. 122, 78 N. W. 426 (1899). Cf. Farmers Exchange v. Walter M. Lowney Co., 95 Vt. 445, 115 A. 507 (1921). There are numerous cases that hold it is sufficient. Cochrane v. Hyre, 49 W. Va. 315, 38 S. E. 554 (1901); Thompson v. First Methodist Episcopal Church of Dallas, (Tex. Comm. App. 1931) 38 S. W. (2d) 561, reversed on other grounds, (Tex. Comm. App. 1931) 41 S. W. (2d) 33. Cf. Weinberg v. Stratton, 163 Mich. 408, 128 N. W. 926 (1910). The conflict between requiring the notice to give full knowledge to the debtor, and only putting him on inquiry, is more apparent than real. Knowledge here means knowledge of the claim, not of the proofs, except perhaps in the Skobis case, which is dictum, while the debtor in the latter cases is put on inquiry to obtain the facts of proof, not to ascertain the existence of a claim.

[11] Smith v. Semon, 32 Cal. App. 640, 163 P. 1038 (1906). Without other evidence to put the debtor on inquiry, a form notice with the name of the assignee blank was insufficient.

[12] In re Phillips' Estate, 205 Pa. 525 at 530, 55 A. 216 (1903): If not formal, the notice "must come in such a way or under such circumstances to the person alleged to have been notified, that, as a reasonable man, he ought to regard it as notice to control his conduct in relation to the matter which is the subject of the notice."

[13] "Ordinarily, the relation between a bank and its depositors is that of debtor and creditor. It is bound by an implied contract to repay the deposit on the depositor's demand or order. However, a bank deposit is more than an ordinary debt, and the depositor's relation to the bank is not identical with that of an ordinary creditor." Gibraltar Realty Corp. v. Mount Vernon Trust Co., (N. Y. 1938) 12 N. E. (2d) 438 at 439. Glennan v. Rochester Trust, etc. Co., 209 N. Y. 12, 102 N. E. 537 (1913). However, since a bank is at prefect liberty to choose its customers, 5 MITCHIE, BANKS AND BANKING 37 (1932), it is not clear that the assignee need be treated as more than an ordinary creditor. Thus the assignment would change the account to a debt due on demand of the owner.

[14] 5 MITCHIE, BANKS AND BANKING 430 (1932). Woody v. First National Bank of Rocky Mount, 194 N. C. 549, 140 S. E. 150 (1927); Hanna v. Drovers' National

claimed assignment was invalid. Thus the bank would be forced to guess at its peril as to the validity of the unproved assignment. To relieve the bank from the necessity of hazarding such a guess, the instant case lays down the rule that the only notice sufficient to put a bank on inquiry is the original signed assignment.[15] It is submitted that the protection afforded a bank by such a rule is at the expense of a strained and unnecessary interpretation of the law of notice.[16] If the basic test of the sufficiency of the notice is reasonableness,[17] it seems strained and unsatisfactory to allow a bank utterly to ignore the same notice which would bind any other business house. Further, it seems unnecessary to protect the bank, at the expense of the assignee, from its peculiar liability for slander of credit any longer than is necessary to enable it to rid itself of that liability. Inasmuch as a bank may terminate its banker-customer relation upon reasonable notice to the depositor,[18] *a fortiori* the bank could preclude a depositor from charging slander of credit by giving notice that funds must be withheld from check for a reasonable time till proofs can be submitted of an alleged assignment. Ordinarily a bank ignores adverse claims to an account at its peril,[19] and may retain funds to cover the claim if notice is promptly given the depositor.[20] The New York court feels that this notice to the depositor is a burden

Bank, 92 Ill. App. 611 (1900), affd. 194 Ill. 252, 62 N. E. 556 (1901); Wiley v. Bunker Hill National Bank, 183 Mass. 495, 67 N. E. 655 (1903).

[15] "The case would be different if the assignment itself, bearing the signature of the depositor, had been filed with the bank. Anything less than that is not sufficient notice." Gibraltar Realty Corp. v. Mount Vernon Trust Co., (N. Y. 1938) 12 N. E. (2d) 438 at 441.

[16] The rule of the instant case makes notice the equivalent of a demand by presentment of a check. Demand and notice serve quite different purposes, demand necessarily being more formal, as it is a condition precedent to holding third parties liable on their indorsements. A demand may still be a condition precedent to liability on the depositor's contract, 5 MITCHIE, BANKS AND BANKING 685 (1932), although a demand is not a condition precedent on most demand obligations.

[17] Merrill, "Unforgetable Knowledge," 34 MICH. L. REV. 474 (1936).

[18] Elliott v. Capital City State Bank, 128 Iowa 275, 103 N. W. 777 (1905); Reid v. Charlotte National Bank, 159 N. C. 99, 74 S. E. 746 (1912); Prosperity Limited v. Lloyds Bank, Limited, 39 L. T. R. 372 (1923); Jaselli v. Riggs National Bank, 36 App. D. C. 159 (1911), quoting King v. British Linen Co., 1 Scot. Sess. Cas., 5th series, 928 (1898).

[19] 1 MORSE, BANKS AND BANKING, 6th ed., § 342 (1928); 5 MITCHIE, BANKS AND BANKING 172 (1932); Eastland County v. Chapman, (Tex. Comm. App. 1925) 277 S. W. 629; Miller County Bank v. Beasley, 165 Ark. 44, 262 S. W. 981 (1924); Miller v. Bank of Washington, 176 N. C. 152, 96 S. E. 977 (1918); Drum-Flato Commission Co. v. Gerlach Bank, 92 Mo. App. 326 (1902). Payment of a valid claim will give the bank a good defense against the depositor even when a plea of *jus tertii* would not be good. Parks v. Knickerbocker Trust Co., 137 App. Div. 719, 122 N. Y. S. 521 (1910); White v. Bank of Angola, 130 Misc. 99, 223 N. Y. S. 508 (1927). The bank will only be required to withold funds in favor of the adverse claimant a reasonable time. National City Bank v. Continental National Bank & Trust Co., (C. C. A. 10th, 1936) 83 F. (2d) 134; Huff v. Oklahoma State Bank, 87 Okla. 7, 207 P. 963 (1922); Drumm-Flato Commission Co. v. Gerlach Bank, supra.

[20] Miller v. Bank of Washington, 176 N. C. 152, 96 S. E. 177 (1918); Ford

on the bank, uncalled for by contract and unfair to impose by law. But it is submitted that the duty to give decent respect to the claims of another is never a duty imposed by contract with a third party, and in this case it would be far from an arduous burden. The authorities relied on by the court to justify the bank in ignoring the assignment while continuing business with the assignor are not convincing in their support of the proposition.[21]

v. Ames National Bank, 196 Iowa 958, 195 N. W. 742 (1923); Jaselli v. Riggs, 36 App. D. C. 159 (1911).

[21] The language of Skobis v. Ferge, 102 Wis. 122 at 130, 78 N. W. 426 (1899), quoted by the court, is dictum, criticised in Farmers Exchange v. Walter M. Lowney Co., 95 Vt. 445, 115 A. 507 (1921).